



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Virginia Pesticide Control Board
VAC Chapter Number:	2 VAC 20-51
Regulation Title:	Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act
Action Title:	Retain
Date:	December 6, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation requires any person who uses or supervises the use of (1) restricted use pesticides as a private applicator, (2) general or restricted use pesticides as a commercial applicator or registered technician or (3) general or restricted use pesticides as a commercial applicator not-for-hire to participate in approved training, pass an approved written examination and be certified as a pesticide applicator by the Virginia Department of Agriculture and Consumer Services. This regulation also establishes record-keeping requirements for pesticide applicators, and requirements for reporting pesticide accidents, incidents, or loss.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Sections 3.1-249.30, 3.1-249.51 A and B, and 3.1-249.54 A of the Code of Virginia (1950), as amended, provides the legal authority of the Pesticide Control Board to promulgate this regulation.

The regulation does not exceed the state mandate but does exceed the federal requirements in that certification under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), is only required for those who apply restricted use pesticides. Because of the tragic deaths of two Virginia citizens in 1987 as a result of the misuse of a

general use pesticide, the General Assembly enacted the Pesticide Control Act with provisions which exceeds the minimum standards established by the federal government in order to protect the health and safety of Virginia citizens and to protect Virginia's environment.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The Department published its notice in The Virginia Register of Regulations on September 11, 2000 advertising the opportunity to comment on this regulation pursuant to Executive Order Number Twenty-Five (98). An informal advisory group was not formed for the purpose of assisting with this periodic review.

Comments were received from one Virginia citizen and from the Montebello Clean Mountain Coalition, a citizen association with headquarters in Montebello, Virginia.

The individual citizen who commented expressed general concern about the need for additional regulations to protect Virginia citizens from pesticide drift and accidental exposure, to require

posting and notification of pesticide applications, to establish a registry of chemically sensitive individuals and to require training and certification of pesticide applicators to use least toxic products or natural alternatives in pest control. Specific responses to the suggestions made by this citizen are as follows:

1. “Businesses engaged in pesticide application must have vehicles painted with the name of their businesses on their vehicles and their valid business license or/or VDA certification number.”

The agency will give further consideration to this suggestion. However, the agency does not recommend the regulation be amended at this time.

2. “The VDA should enact regulations to prevent uncertified applicators from buying chemicals that they are not trained to use, even if this means that pesticides are signed for in hardware stores and garden shops throughout the Commonwealth by all citizens.”

Under current regulations, private pesticide applicators who use restricted use pesticides (RUP) are required to be certified in accordance with § 3.1-249.54 of the Code of Virginia and commercial applicators who use any pesticide, whether general or RUP, must be certified in accordance with § 3.1-249.52 of the Code. Regulation 2 VAC 20-40 requires businesses selling RUP to record the name and certification number of the purchaser. The agency believes that these requirements are protective of the general health and safety of the Commonwealth’s citizens and protective of Virginia’s environment. The agency further believes that requiring all citizens to sign for pesticides purchased at retail establishments will be unduly burdensome on Virginia’s businesses and citizens and difficult to administer and enforce.

3. “The VDA should regulate where and how pesticides are stored, and handled in businesses, enabling the public to have access to these buildings without coming in direct contact with toxic products. (Practices, such as stacking pesticides products around entrances, exits and cashier’s stations in retail establishments should be banned.)”

The handling and storage of pesticides is currently regulated under 2 VAC 20-20-150. The agency will take this suggestion under consideration and make a determination if the regulation, as written, is sufficiently protective of the public.

4. “The VDA should increase the number of investigators and support staff to be able to thoroughly investigate grievances and violations of Virginia Pesticide Law.”

The General Assembly authorized the agency an additional pesticide investigator, bringing the total complement of pesticide investigators to eleven, and a second Compliance Manager to process compliance cases in 2000. Staffing is not the subject of either of the regulations under review. However, the agency will continue to monitor resource needs and will make recommendations for additional staff if needs dictate.

5. “The VDA should begin to look carefully at regulating fertilizers and the contents of fertilizers, and to enact stricter regulations regarding pesticides and other toxic materials in fertilizers that are used on Commonwealth soil. The contents and sources for fertilizer that is used on our soil and finds its way into our ground water should not be a mystery to the government or the consumer.”

Fertilizers are regulated by the Board of Agriculture and Consumer Services, under the Virginia Fertilizer Act, and are not the subject of these regulations. Studies conducted in the Commonwealth have not demonstrated that pesticide contamination of Virginia’s ground water is a significant problem. However, the agency will determine if these regulations are sufficiently protective of the state’s ground water resources from pesticide contamination.

6. “The VDA should begin to create a system for providing citizens who are disabled by chemical exposures some protection from ongoing, repeated pesticide applications, by enforcing no-application zones around their properties.”

In the past, the agency has conducted several public hearings to hear testimony on the need for establishing registries for chemically-sensitive individuals or to require posting and/or notification of pesticide applications. The agency did not conclude that there was justification to mandate either the creation of a chemically-sensitive individual’s registry or posting and

notification. Recent attempts to amend the Pesticide Control Act to mandate posting and/or notification of pesticide applications in the Commonwealth have been unsuccessful. On the other hand, the agency has adopted resolutions promoting voluntary notification of pesticide applications in the school.

7. “The VDA would do well to enact a strong education program for all citizens about alternatives to chemical pesticides and toxic chemical fertilizer.”

In cooperation with the Virginia Cooperative Extension, the agency has and will continue to emphasize education and outreach as critical components of an effective pesticide management program. As stated above, fertilizers are regulated under the Virginia Fertilizer Act and are not the subject of these regulations.

Responses to the two concerns expressed by the Montebello Clean Mountain Coalition are as follows:

1. “.....that current enforcement regulations focus on labeling criteria which base “safe” exposure rates on what the average, American, adult male (weighing 160-180 lbs.) can tolerate without significant health risk and does not include provisions for ethnicity, women, children and the infirm.”

Prior to registration by the EPA, all pesticide products undergo extensive testing to ensure that they do not cause undue adverse effects on human health or the environment when used in accordance with the label directions. These studies include acute and chronic toxicity, teratogenicity, mutagenicity and carcinogenicity. Recently, EPA has placed additional emphasis on studies to ensure that registered pesticides are not harmful to infants and children. In general, pesticides registered by EPA may be registered by the Commonwealth of Virginia without additional testing. However, Virginia has the authority to request additional studies on any pesticide registered by the Commonwealth to ensure that the application of the product will not be unduly harmful to the Commonwealth citizens or its environment.

2. “We applaud the Virginia Office of Pesticide Services for their efforts to investigate the need for stronger registration standards that go beyond the current national dictae with regard to the Minimum Risk Pesticides currently exempt under FIFRA Section 25(b).”

Currently § 3.1-249.35 of the Code of Virginia requires that every pesticide which is manufactured, distributed, sold, or offered for sale, used or offered for use within the Commonwealth, shall be registered in accordance with regulations adopted by the agency. Therefore, the Code, as currently written, does not allow for exempting FIFRA 25 (b) products from registration in the Commonwealth.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The specific and measurable goals of the regulation are to (1) protect the public's health, safety, and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth; and (2) ensure that all persons who apply pesticides as private applicators, registered technicians, commercial applicators, or commercial applicators not-for-hire in Virginia have up-to-date approved pesticide training, have demonstrated their knowledge of pesticide use through agency approved testing, and are certified that they have met all requirements of state law governing the application.

The regulation is effective in that 10,285 commercial pesticide applicators and registered technicians were certified in FY 99-00. Over 11,000 private pesticide applicators were certified and renewed their certification by January 2, 2000.

The regulation is necessary to protect health, safety and welfare of citizens because it ensures that those individuals applying pesticides are properly trained so that they may apply pesticides in a manner that will not harm people or the environment. Also, by requiring the training and certification of pesticide applicators, citizens are able to save considerable money in that

necessary pesticide applications are made using only the amounts required to control targeted pests.

The regulation is clearly written and easy to understand. This regulation was adopted in March 1999 by the Pesticide Control Board after a complete rewrite to ensure clarity of reading and understanding.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

One alternative to the existing regulation would be to allow EPA to regulate the use of pesticides within the Commonwealth. This alternative was rejected because virtually all regulated applicators and pesticide application businesses have stated on numerous occasions that they would prefer to work directly with state officials in regulatory matters concerning pesticide use than federal officials. By having its own law and regulation, Virginia is able to enter into an agreement with EPA whereby Virginia officials are allowed to enforce pesticide-related federal laws and regulations as well as its own regulations.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

These regulations were extensively revised and adopted by the Board in March 1999. At that time the Board addressed the suggestions and concerns expressed by the public who were afforded opportunities to comment on the proposed regulations in accordance with the Administrative Process Act and the Board's Public Participation Guidelines. However, several amendments were discussed by the agency at its October 2000 meeting to address new issues but since there was not a quorum, no official action was taken. Therefore, the agency does not recommend any changes at this time, though it might consider amendments at a future date.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

As the agency is not recommending any action on the regulation at the present time, this regulation is not expected to negatively impact the institution of the family and family stability, including rights of parents in the education, nurturing, and supervision of their

children. The regulation also will not negatively impact economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. The regulation will not erode martial commitment or decrease disposable family income.